



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TEGE EO Examinations Mail Stop 4920 DAL
1100 Commerce St.
Dallas, Texas 75242

501.03-00

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: February 1, 2010

Release Number: 201017064

Release Date: 4/30/10

LEGEND

ORG = Organization name

Address = address XX = Date

Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

Employee Telephone Number:

ORG

ADDRESS

LAST DATE TO FILE A PETITION

IN TAX COURT: May 3, 20XX

CERTIFIED MAIL – RETURN RECEIPT

Dear

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the Code). Our favorable determination letter to you dated January 28, 20XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective January 1, 20XX.

The revocation of your exempt status was made for the following reason(s):

Organizations described in IRC 501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. ORG fails to meet the operational test. The foundation promotes and advertises the private foundation for non-exempt purposes. ORG sole purpose is to attract business for the inn and restaurant. The PF property is exclusively devoted to private interest. The public benefits are incidental to the benefits received by CO-1. The private foundation is used to generate income for CO-1. All income generated from private events inure to the benefit of the for profit business.

A charitable organization is an organization whose primary activities are for the benefit of the general public. ORG specific purpose for which it is organized; to educate and inspire individuals, particularly the young, about exotic and tropical ecosystems and their preservation has failed to materialize.

An organization fails to qualify for exemption under IRC 501 (c)(3) when they promote the private interest of a for profit business.

Contributions to your organization are no longer deductible under IRC §170 after January 1, 20XX.

You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the tax year ending December 31, 20XX, and for all tax years thereafter in accordance with the instructions of the return.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91st Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to the United States Tax Court at the following address:

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

See the enclosed Notice 1546, Taxpayer Advocate Service - Your Voice at the IRS, for Taxpayer Advocate telephone numbers and addresses.

You should contact your State officials if you have any questions about how this final determination may affect your State responsibilities and requirements.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Nanette M. Downing
Acting Director, EO Examinations

Enclosures:
Publication 892
Publication 1546



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service
Exempt Organizations Examinations
7850 SW 6th Court, Stop 7954
Plantation, Florida 33324-3202

September 23, 2009

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

Letter 3618 (04-2002)
Catalog Number 34809F

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Sunita Lough
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number	Year/Period ended December 31, 20XX

LEGEND

ORG = Organization name Address = address City = city State = state
 XX = Date President = president Chairman = chairman SECT =
 secretary EMP-1 = 1st EMP CO-1 & Co-2 = 1st & 2nd companies

Issues:

Whether ORG is operated exclusively for purposes described in Section 501(c)(3) of the Internal Revenue Code, more specifically, charitable and educational purposes. Are the educational activities conducted substantial in nature to be its primary activities.

Whether private benefit exists by providing unlimited use and access to ORG by a private business to generate income.

Facts:

Background:

On September 21, 19XX, ORG filed original articles of incorporation with the State of State. ORG is a private foundation, exempt under IRC Section 501(c)(3). The articles of incorporation provided that its purpose was, in part, "to receive moneys and disburse them exclusively for charitable, scientific, literary or educational purposes, including the encouragement of art and the preservation of the environment". "The specific purpose for which ORG is organized is to educate and inspire individuals, particularly the young, about exotic and tropical ecosystems and their preservation. To accomplish this purpose, the Corporation will create one or more botanical gardens of museum quality."

ORG submitted its Form 1023, Application for Recognition of Exemption to the Internal Revenue Service on December 23, 19XX.

The following Individuals are listed as current ORG. directors:

Names

President, President
 Chariman, Chairman
 SECT, Secretary/treasurer

ORG – overview and activities

ORG is located at Address, City State. The ORG is an acre of dense tropical gardens with over 500 imported species of plants, as African palms, chestnut trees, bay rum

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ORG			

plants, allspice trees, exotic fruits, bamboos, flowers and many more exotic plants. ORG has footbridges leading to streams, waterfalls and fresh water swimming ponds filled with tropical fish. There are also gazebos and benches blended in throughout the garden with rare bamboos with Asian sculptures, rare bird's and imported exotic fish. The garden was designed by owner Chairman, an environmentalist and entrepreneur.

ORG is joined by CO-1, a stylish boutique hotel, a private business. CO-1 is a small resort, a tropical jungle getaway. The Inn features luxury accommodations tucked away in ORG. The Inn has eleven guest rooms with balconies that over look ORG. It also features a four-star restaurant with outdoor a bar and dinning overlooking ORG.

The principal attraction to CO-1 is ORG which is featured as apart of the Inn in travel literatures. Articles describe CO-1's as having self-sustaining, swimming pond. The pond is akin to swimming in a large aquarium. Bathers are joined by a diverse fish habitat. The pond is strictly limited to CO-1 guest. CO-1 is listed in the National Register of Historical Places as a historic landmark. It's the oldest house in City, dating back to 19XX.

The gardens land is leased at no charge from CO-2 ORG is funded exclusively by CO-1, Inn. As a benefit of having access to ORG to enhance and attract business, ORG receives \$ annually in rent. CO-1 manages, control and directs all activities carried on at ORG. Maintaining and beautifying the gardens as desired by CO-1 is a significant private benefit. The use of the Garden to generate income from weddings, Bar Mitzvahs, ceremonies' and other special events also is a private benefit to CO-1. The gardens are regularly used for these social events.

ORG is open free of charge to the public. The grounds supervisor gives tours and is responsible for general daily maintenance. He is an employee of CO-1. Tours are offered four days a week. Guided tours can be pre-arranged by small groups. Visitors are allowed to wander through the garden freely. Tour guide EMP-1, explained that most tours are given during cooler months, not summer. Schools in City do not visit frequently due to the cost and budget cuts. Garden clubs and hotel guest visit the gardens regularly.

CO-1 & CO-2 is owned by Chairman. He is a disqualified person due to his substantial contributions. He has contributed over one million dollars since ORG inception. Future plans are to expand the gardens and lodgings.

ORG is tucked away behind thick hedges, off the main street. You would never know it was there. From the streets, it appears to be a private business. CO-1 and ORG are inseparable on the property. ORG have an entrance gate with a sign inviting the public. ORG does not advertise to the public. The general public is for the most part unaware

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ORG exist. No effort is made to advise the general public of the gardens through publicity or advertisements.

Law:

Section 501(c)(3) of the Code provides for the exemption of organizations that are organized and operated exclusively for charitable or educational purposes as long as no part of the net earnings inure to the benefit of any private shareholder or individuals.

Section 1.501(c)(3) -1(d)(1)(i) of the Code provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization(referred to in this section as its "articles") as defined in subparagraph (2) of this paragraph:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3) -1(c)(2) of the Income Tax Regulations states that an organization is not organized exclusively for exempt purposes if its net earnings inure in whole or in part to the benefit of any private shareholder or individuals.

Section 1.501(a) -1(c) of the regulations states that the words "private shareholder or individuals" refer to persons having a personal or private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not organized exclusively for exempt purposes unless it serves a public rather than private interest and that it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders, or persons controlled directly or indirectly by such private interest.

Revenue Ruling 74-600 states that where the placing of Foundation paintings in the residence of a disqualified person was held to be self-dealing. The fact that the sculptures are outside and the paintings were inside does not change the fact that each situation results in a significant benefit to the disqualified persons from the use of the

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foundation's assets. With the limited use by others, this benefit to disqualified persons cannot be considered to be incidental or tenuous. Therefore the placing of a foundation's assets on the grounds of a disqualified person's property is self-dealing within the meaning of section 4941 of the Code.

Government's Position:

It is the Service's position that ORG primarily benefits the interest of CO-1, a for profit business. The Garden is used to promote the business and its assets to generate income for restaurant and inn. CO-1 advertises ORG as its principal attraction. The advertisement is aimed toward inn and restaurant patrons only. CO-1 controls ORG by leasing the Garden. CO-1 determines the activities carried on and derives substantial income from a private foundation. Access to ORG bestows substantial non-exempt private benefits on a for profit business more so than public benefits. An organization does not qualify under IRC 501(c)(3) if it serves substantial private interest of an organization that is not exempt under IRC 501(c)(3). The private foundation appears to be organized exclusively to enhance and generate income for a non-exempt entity. The lease payments paid to the private foundation although used for maintenance and repairs provides substantial benefits for the inn and restaurant.

The serene atmosphere of ORG helps attract customers and businesses to CO-1 that would otherwise not be there. The advertising and promotion of ORG as apart of CO-1 is in furtherance of CO-1 business purpose which is to generate income. The foundation's assets help to generate business for the inn and restaurant. The foundation's educational activity to the public, specifically children and youth about the environment is insubstantial.

Conclusion:

Based on the examination its' the IRS's position that ORG fails to meet the operational test. The foundation promotes and advertises the private foundation for non-exempt purposes. ORG sole purpose is to attract business for the inn and restaurant. The PF property is exclusively devoted private interest. The public benefits are incidental to the benefits received by CO-1. The private foundation is used to generate income for CO-1. All income generated from private events inure to the benefit of for profit business. A charitable organization is an organization whose primary activities are for the benefits of the general public. ORG specific purpose for which it is organized; to educate and inspire individuals, particularly the young, about exotic and tropical ecosystems and their preservation has failed to materialize. An organization fails to qualify for exemption under IRC 501 (c)(3) when they promote the private interest of a for profit business.

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It is recommended that the Service's letter to ORG, dated January 28, 20XX that recognizes exemption from federal income tax under IRC Section 501(c)(3) be revoke effective January 1, 20XX.